

AG Contract No.: KR05-0110TRN
ADOT ECS File No: JPA 04-128
Project No.: HRF-FLA-0-808
Project: Empire Avenue
TRACS No.: HF108 01C - (FY05)
 HF108 02C - (FY06)
Budget Source Item No.: N/A
HURF Exchange Program

INTERGOVERNMENTAL AGREEMENT

BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF FLAGSTAFF

THIS AGREEMENT is entered into this date June 20, 2005, pursuant to Arizona Revised Statutes, § 11-951 through § 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State"), and the CITY OF FLAGSTAFF, ARIZONA, acting by and through its MAYOR and CITY COUNCIL (the "City").

I. RECITALS

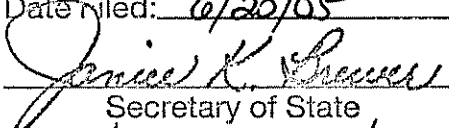
1. The State is empowered by Arizona Revised Statutes § 28-401 and § 28-6993(g) to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State

2. The City is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the City.

3. The State has approved the exchange of \$402,690.00 in Highway User Revenue Funds (HURF) in Fiscal Year 2005 to the City for the roadway reconstruction to Empire Avenue, and such funds will be repaid to the State by withholding from the FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION (FMPO) federal funds and the obligation authority for federal funds in the amount of \$417,718.00 in Fiscal Year 2005.

4. The State has approved the exchange of \$402,690.00 in Highway User Revenue Funds (HURF) in Fiscal Year 2006 to the City for the roadway reconstruction to Empire Avenue, and such funds will be repaid to the State by withholding from FLAGSTAFF METROPOLITAN PLANNING ORGANIZATION (FMPO) federal funds and the obligation authority for federal funds in the amount of \$417,718.00 in Fiscal Year 2006.

THEREFORE, in consideration of the mutual Agreements expressed herein, it is agreed as follows:

NO. 27560
Filed with the Secretary of State
Date Filed: 6/22/05

Secretary of State
By: Janie Passerillo

II. SCOPE OF WORK

1. The City shall:

a. Provide design plans, specifications and such other documents and services required for construction bidding and construction.

b. Call for bids and award one or more construction contracts for the project. Administer same, and make all payments to the contractor(s). Be responsible for any additional funds required to complete the project and for any contractor claims for extra compensation due to delays or whatever reason. Comply with all applicable State laws, rules and regulations.

c. Invoice the State for thirty percent of the \$402,690.00 project construction cost for Fiscal Year 2005, at the start of construction.

d. Invoice the State for thirty percent of the \$402,690.00 project construction cost for Fiscal Year 2005, at the thirty percent and sixty percent project construction completion stages.

e. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

f. Invoice the State for the remaining ten percent of the \$402,690.00 project construction cost for Fiscal Year 2005, at the one hundred percent project construction completion stage after the City, FMPO, and the State (ADOT) representatives have completed final project review.

g. After October 1, 2005, invoice the State for thirty percent of the \$402,690.00 project construction cost for Fiscal Year 2006.

h. After October 1, 2005, invoice the State for thirty percent of the \$402,690.00 project construction cost for Fiscal Year 2006, at the thirty percent and sixty percent project construction completion stages.

i. Upon completion, approve and accept the project as complete and provide maintenance. Provide the State with a letter documenting the notice of the approval and acceptance of the project.

j. After October 1, 2005, invoice the State for the remaining ten percent of the \$402,690.00 project construction cost for Fiscal Year 2006, at the one hundred percent project construction completion stage after the City, FMPO, and the State (ADOT) representatives have completed final project review.

2. The State shall:

a. Within 30 days after receipt of an invoice and a letter confirming the construction project has been awarded, advance the City thirty percent of the HURF funds.

b. Within 30 days after receipt and approval of construction invoices at the thirty and sixty percent construction completion stages, advance the City HURF funds in the amount of thirty percent at each invoiced stage for construction.

c. After final project review, and within 30 days after receipt and approval of construction invoices for the remaining ten percent of the project construction, advance the City HURF funds in the final ten percent amount of the \$402,690.00 for construction in Fiscal Year 2005.

d. Withhold from FMPO, federal funds and the obligation authority of federal funds \$417,718 00 in Fiscal Year 2005

e. Within 30 days after receipt of an invoice Fiscal Year 2006 and a letter confirming the construction project has been awarded, advance the City thirty percent of the HURF funds.

f. Within 30 days after receipt and approval of construction invoices in Fiscal Year 2006 at the thirty and sixty percent construction completion stages, advance the City HURF funds in the amount of thirty percent at each invoiced stage for construction

g. After final project review, and within 30 days after receipt and approval of construction invoices for the remaining ten percent of the project construction, advance the City HURF funds in the final ten percent amount of the \$402,690 00 for construction in Fiscal Year 2006.

h. Withhold from FMPO, federal funds and the obligation authority of federal funds \$417,718 00 in Fiscal Year 2006.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction project. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. The City shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The City shall also require its contractors to name the State and ADOT as an additional indemnitee in the City's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing highway user revenue funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the City and that to the extent permitted by law, the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

2. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project, except any provisions for maintenance shall be perpetual and the responsibility of the City, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon thirty (30) days written notice to the other party. It is understood and agreed that, in the event this Agreement is terminated by the City, the State shall in no way be obligated to maintain said project.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be canceled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this Agreement.

6. This Agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order

Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

7. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17th Avenue, Mail Drop 616E
Phoenix, AZ 85007
FAX (602) 712-7424

City of Flagstaff
City Manager
211 West Aspen Avenue
Flagstaff, AZ 86001-5399

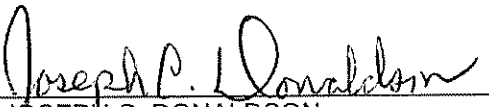
10. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto and incorporated herein, is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this Agreement and that the Agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

CITY OF FLAGSTAFF


STATE OF ARIZONA

Department of Transportation

By 
JOSEPH C. DONALDSON
Mayor

By 
DALE BUSKIRK, Division Director
Transportation Planning Division

ATTEST

By 
MARGIE BROWN
City Clerk

APPROVAL OF THE CITY OF FLAGSTAFF ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the CITY OF FLAGSTAFF, an agreement among public agencies which, has been reviewed pursuant to A.R.S § 11-951 through § 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the CITY under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement

DATED this 26th day of April, 2005.


City Attorney

RESOLUTION NO. 2005-44

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE STATE OF ARIZONA THROUGH THE DEPARTMENT OF TRANSPORTATION AND THE CITY OF FLAGSTAFF AUTHORIZING EXCHANGE OF HIGHWAY USER REVENUE FUNDS FOR THE EMPIRE AVENUE ROADWAY RECONSTRUCTION PROJECT.

WHEREAS, the State of Arizona ("State") through the Arizona Department of Transportation ("ADOT") has approved the exchange of \$402,690.00 in Highway User Revenue Funds ("HURF Funds") in each of Fiscal Years 2005 and 2006 to the City of Flagstaff ("City") for the construction of improvements for the Empire Avenue Roadway Reconstruction Project ("Project"); and

WHEREAS, the City intends to repay the HURF Funds to the State by allowing the withholding of federal funds from the Flagstaff Metropolitan Planning Organization ("FMPO") and the obligation authority for the funds in the amount of \$417,718.00 in each of Fiscal Years 2005 and 2006 to the City; and

WHEREAS, the City and the State desire to enter into an intergovernmental agreement ("IGA"), a copy of which is submitted as an attachment to the Staff Summary Report in support of this Resolution, in order to authorize the exchange of HURF Funds as described above for the Project improvements and pursuant to which, the City would provide design services and specifications, including construction plans and documents required for bidding and construction of the Project, in addition to calling for and awarding bids, and administering all construction contracts for the Project; and

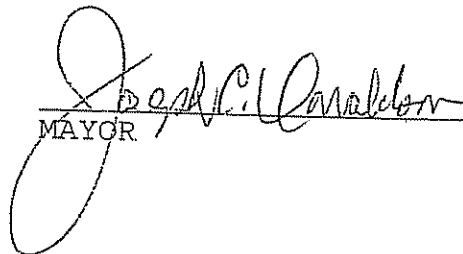
WHEREAS, the State and the City's Capital Improvements Department desire to obtain City Council approval for the City's entry into the proposed IGA; and

WHEREAS, the City Council has reviewed the proposed IGA and finds that it is in the best interests of the City to enter into the IGA with the State.

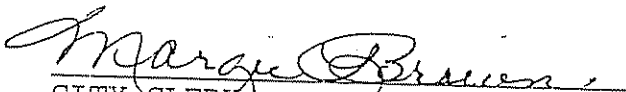
NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. That the Intergovernmental Agreement between the State and the City submitted as an attachment to the Staff Summary Report in support of this resolution, in support of this Resolution be hereby approved and the Mayor be authorized and directed to execute the Intergovernmental Agreement on behalf of the City of Flagstaff.


PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this 19th day of April, 2005.

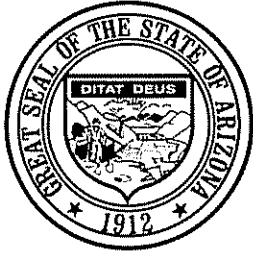

MAYOR

ATTEST:


CITY CLERK

APPROVED AS TO FORM:


CITY ATTORNEY



**ATTORNEY GENERAL
CIVIL DIVISION
TRANSPORTATION SECTION**

MEMORANDUM

Jeffrey T. Murray
Assistant Attorney General

Direct: (602) 542-8859
Fax: (602) 542-3646


**INTERGOVERNMENTAL AGREEMENT
DETERMINATION**

A.G. Contract No. KR05-0110TRN (**JPA 04-128**), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED June 14th, 2005.

TERRY GODDARD
Attorney General



JEFFREY T. MURRAY
Assistant Attorney General
Transportation Section

JTM:dgr
Attachment
909510